

Docket No: 4056.1066 US1

Expedited Procedure under 37 C.F.R. 1.116
Examining Group 1624

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Zhenwei Miao, Ying Sun, Suanne Nakajima, Datong Tang, Frank Wu, Gouyou Xu, Yat Sun Or and Zhe Wang

Application No: 10/774,047 Group No: 1624

Filed: February 06, 2004 Examiner: Noble E. Jarrell

Confirmation No.: 4991

Title: MACROCYCLIC HEPATITIS C SERINE PROTEASE INHIBITORS

REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT
UNDER 37 CFR 1.705

Dear Sir:

This letter is to request correction of the Patent Term Adjustment under Rule 705. The \$200 fee required by Rule 18(e) is enclosed herewith.

Pursuant to Rule 703(a) the Office has determined that 713 days of delay have been incurred. Applicants do not agree with this determination.

Patent term extensions are available under 35 U.S.C. § 154(b)(1)(A)-(B). 35 U.S.C. § 154(b)(1)(A) provides for extension of patent terms for certain specified kinds of Patent and Trademark Office (PTO) delay while 35 U.S.C. § 154(b)(1)(B) provides for extension whenever the patent prosecution takes more than three years.

A period of delay under § 154(b)(1)(A) is referred to herein as an A-delay; and a delay under § 154(b)(1)(B) is referred to herein as a B-delay. 37 CFR 1.703(a) and 1.703(b) corresponds to A-delay and B-delay, respectively. Applicants agree with the

Office's calculations of 740 days of delay for failing to issue a first action within fourteen months and the deduction of 27 days for Applicants' delay.

However, Applicants are entitled to a further adjustment based on Office's delay in responding to Applicants' reply under Rule 703(a)(2). The Office mailed a restriction requirement on April 16, 2007. Applicants filed a reply to the restriction requirement on June 14, 2007. Thus, the four month period under 703(a)(2) expired on October 14, 2007. However, a complete Office action was not mailed to Applicants until January 22, 2008.

While it is appreciated that the Office mailed a Non-Final Rejection on July 24, 2007 and a Requirement for Restriction on January 08, 2008, each of these office actions were vacated when Applicants pointed out to the Examiner that they were defective in a telephone interview. The period of delay beyond the four month period set out under Rule 703(a)(2) between June 14, 2007 and January 22, 2008 should be added to the Patent Term Adjustment. Thus, a term of 100 days representing the days between October 14, 2007 and January 22, 2008 should be added to the Patent Term Adjustment, resulting in total of 840 days of "A-delays".

In addition to the change to the Patent Term Adjustment requested above under 703(a), Applicants request the addition of days delayed under Rule 703(b), i.e., the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a). In the instant case, the Rule 703(b) period commenced on February 6, 2007, three years from the filing date of February 6, 2004, and will continue until issuance. To date, the total number of days under Rule 703(b) is 646 days. The period of overlap between the A-period and the B-period herein is the period between October 14, 2007 and January 22, 2008, or 100 days. *Wyeth v. Dudas*, 1:07-cv-01492-JR, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008).

As such, the Patent Term Adjustment in the instant case is the total of A-delay (840 days), B-delay (646 days), the days from today until issue (not yet known, x) less the days of overlap (100 days) and days of Applicants' delay (27 days). 840+646-100-27=1349 days. A minimum period of 1,349 days of Patent Term Adjustment is hereby requested.

Respectfully submitted,

ELMORE PATENT LAW GROUP, P.C.

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